

**RESPONSE TO OFFICE ACTION****A. Status of the Claims**

Claims 1-69 are currently pending in the application. Claims 20-49 and 55-66 are withdrawn. Claims 1, 50, 54 and 67-69 are amended herein.

**B. Priority**

The Action notes that language referencing priority applications must be included in the specification in order to claim priority under 35 U.S.C. §119(e). In response it is noted that a statement that identifies the pertinent International Patent Application (PCT/US00/05915 filed on 3/8/00) and Provisional U.S. Patent Application (60/123,267 filed on 3/8/99) has been added to the amended specification herein. The entry of this statement timely pursuant to 35 U.S.C. §119(e), as the current application was a national filing under §371, prior to November, 29 2000 (see 37 C.F.R. §1.78(a)(2)(ii)(C)). In view of the foregoing, withdrawal of the objection is respectfully requested.

**C. Sequence Rules**

The Action asserts that the application fails to comply with 37 C.F.R. §§ 1.821-1.825 in that the descriptions of Figures 2, 3, 4 and 5 fail to reference the SEQ ID NO of sequences diagramed therein. In response, it is noted that the indicated figure descriptions have been amended herein to recite the specific sequence identification numbers corresponding to each figure. In light of the amendments, the objection is believed moot and removal thereof is respectfully requested.

**D. Rejection of Claims Under 35 U.S.C. §112, First Paragraph**

The Action rejects claims 1-11, 13, 15-19, 50-54, and 67-69 as failing to comply with the written description requirement. Specifically, the Action asserts that SEQ ID NO:1 and SEQ ID NO:4 are not greater than 97% identical and therefore claims directed to a nucleotide or amino acid sequence that is at least 97% identical to SEQ ID NO:1 *and/or* SEQ ID NO:4 are improper. In response, Applicant notes that claim 1, 50, 54 and 67-69 have been amended to remove the term "and". The amendments in no way narrow the scope of the amended claims as the current limitations were fully defined in the previous claim language. In view of the foregoing, removal of the rejection is respectfully requested.

**E. Rejection of Claims Under 35 U.S.C. §112, Second Paragraph**

The Action rejects claims 1-11, 13, 15-19, 50-54 and 67-69 as being indefinite or failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Action reasserts the position that SEQ ID NO:1 and SEQ ID NO:4 are not at least 97% identical on the amino acid level, and therefore rejects claims directed to a sequence that is least 97% identical to SEQ ID NO:1 *and/or* SEQ ID NO:4. In response, Applicants note that the rejection is now moot in view of the claim amendments outlined in Section D above. Removal of the rejection is thus respectfully requested.

**F. Rejection of Claims Under 35 U.S.C. §101**

The Action rejects claims 67-69 as directed to non-statutory subject matter. The Action states that the progeny of transgenic plants to which the claims are directed would effectively include plants that do not contain indicated transgenes. In response, Applicant

notes that, although the claims are already inherently directed to this subject matter the term "transformed" was added to the preamble of claims 67-69 to provide further clarification. These amendments do not narrow the subject claims. In view of the foregoing, the rejection is believed moot, and removal thereof is respectfully requested.

**G. Conclusion**

In conclusion, Applicant submits that, in view of the foregoing remarks, the present case is in condition for allowance and such favorable action is respectfully requested. If however, some unanswered questions remain in the mind of the Examiner, or if the Examiner would be available to discuss the merits of this case, and assist in facilitating its speedy allowance, the Examiner is invited to contact the Applicant's undersigned representative at (512)536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Consideration of the foregoing remarks is earnestly solicited by the Applicant.

Respectfully submitted,



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